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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/004,803	01/09/1998	JASON T. EPPS		1682

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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 11/21/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/004,803	EPPS ET AL.
Examiner	Art Unit	
Gregory J. Strimbu	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 30 August 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-5,7,9 and 12-16 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5,7,9 and 12-16 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 19 July 2000 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on July 19, 2000 have been approved.

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the proximity sensor is focused upward at an angle that deviates from a vertical axis by not more than about 10 degrees (claims 1-3).

***Claim Rejections - 35 USC § 112***

Claims 1-5, 7, 9 and 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "an extended arm" on line 10 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the object set forth above or is attempting to set forth another object in addition to the one set forth above. Recitations such as "sufficient inhibit objects" on line 3 of claim 15 render the claims indefinite because they are grammatically awkward and confusing.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 9, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Jonsson '912. The admitted prior art of figure 5 discloses a fast food service window comprising a window assembly with at least one movable window member 16, a window operator assembly (not shown, but disposed behind upper frame member 21) mechanically coupled to the movable window member 16, a proximity sensor comprising an emitter 61 emitting radiation and a receiver 62 receiving radiation from the emitter, the radiation being reflected from an object being sensed, the proximity sensor being electrically coupled to the window operator assembly, wherein the movable window member 16 opens whenever a person is sensed by the proximity sensor 60. The movable window member 16 is opened when an infrared beam is detected by the infrared receiver 62 and is closed when the infrared beam is not detected by the infrared receiver 62. The sensor 60 has an integral emitter 61 and receiver 62. The admitted prior art of figure 5 is silent concerning focusing a plurality of sensors upwardly.

However, Jonsson '912 discloses a sensor 10 having a plurality of integral infrared emitters 14 and sensors 16. The sensors 16 and the emitters 14 are angled upwardly as shown in figure 4. The sensor 10 is angled such that it will only operate the

door when a person is in a predetermined desired position and will operate the door when an extended arm of a person is over the proximity sensor.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art of figure 5 with upwardly focused sensors to only operate the door when a person is in a desired predetermined position, as taught by Jonsson '912, to prevent the door from unexpectedly opening, to conserve energy and to increase the working life of the door. Moreover, one with ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to focus the proximity sensors upwardly at an angle that deviates from a vertical direction by not more than about 10 degrees.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Jonsson '912 as applied to claims 1-5, 7, 9, 12 and 16 above, and further in view of Hagenbook. The admitted prior art of figure 5 is silent concerning a ring that rises above the sensor.

However, Hagenbook discloses a proximity sensor 93 that is surrounded by a ring and a lens system 30 that rises above the sensor 93 a distance sufficient to inhibit objects approaching the lens from disabling the functioning of the proximity sensor before an extended arm is detected.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art of figure 5, as modified above, with rings, as taught by Hagenbook, to more accurately direct the sensor beams to prevent unwanted activation of the window.

### ***Response to Arguments***

Applicant's arguments filed August 30, 2001 have been considered but they are not persuasive.

With respect to the applicant's comments concerning the angle of the proximity sensor(s) with respect to a vertical axis, the examiner respectfully disagrees. No where in the original disclosure does the applicant state that the proximity sensor is angled vertically. In fact, the applicant has gone to great lengths to set forth that the sensor is angled with respect to the vertical axis. For example, see page 8, lines 8-15. Moreover, the applicant has only set forth that the sensor is angled approximately 10 degrees from the vertical axis. Therefore, the applicant only has antecedent basis for an angle of about 10 degrees, i.e., a little above or below 10 degrees. The applicant has no antecedent basis for "not more than about 10 degrees" since that range includes angles significantly less than 10 degrees, i.e., 5 degrees, etc.

With respect to the applicant's comments concerning Hagenbook, the examiner respectfully disagrees. It should first be noted that the applicant has not invoked 35 USC 112 paragraph 6 because the applicant has not used the customary word "means" or clearly set forth a function that would lead one to believe that the applicant is invoking 35 USC 112 paragraph 6. Moreover, it is unclear what function the applicant is

attempting to set forth since the applicant is merely defining a distance. Therefore, it is the examiner's position that Hagenbook teaches the applicant's claimed invention since it clearly discloses the same distance as that set forth by the applicant. Even if the applicant were to clearly set forth a function while not invoking 35 USC 112 paragraph 6, the examiner is not required to find a reference that discloses the exact function set forth by the applicant. Rather, the examiner need only find a reference that discloses a structure that is capable of performing the same function as that set forth by the applicant. Finally, with respect to the applicant's comments concerning the examiner conceding that the claims do not read on the combination of references, the examiner respectfully disagrees. Claims 1-5, 7, 9, 12 and 16 are clearly not patentable as set forth in the rejection above. Since the applicant has not set forth sufficient evidence of the criticality or unexpected results of positioning the sensor at an angle of approximately 10 degrees with respect to a vertical axis, one can only assume that one of ordinary skill in the art would also be able to determine that angling the sensor at approximately 10 degrees is desirous. With respect to the applicant's comments concerning claim 12, references such as Jonsson teach the sensing of an outwardly extended arm before the detection of a torso. Is the applicant arguing that the subject invention cannot detect a torso of a person? Additionally, the applicant's declarations were considered in the previous office action and are, as they were found then, not persuasive. The declaration of James C. Epps, is not persuasive, because it fails to establish a long felt need since it does not set forth that an art recognized problem existed in the art for a long period of time without solution. The declaration merely sets

forth the difficulties that Quikserv Corporation has had with proximity detectors used with fast food service windows rather than setting forth that the art has recognized the problem. It should be noted that U.S. Patent Nos. 4,029,176, 4,560,912, 4,888,532, 4,590,410, 4,467,251, 5,963,000 or 4,851,746, do not set forth that the art recognized the problem of a person's torso being detected and undesirably causing the actuation of an automatic door/window. Moreover, the declaration of James C. Epps is defective since it refers to the sensor being angled from a vertical by not more than 10 degrees which is not supported by the original disclosure. The declarations of Tom Kirkaldy, Mark Neubauer and Jackson G. Weaver are not persuasive since they merely set forth that they do not believe that one with ordinary skill in the art would combine the teachings of the admitted prior art of figure 5 in view of Jonsson '912. The examiner disagrees with these statements. Moreover, the declarations are defective since they refer to the sensor being angled from a vertical by not more than 10 degrees which is not supported by the original disclosure. Finally, it should be pointed out that in the final analysis, evidence of nonobviousness, although being a factor that certainly must be considered, is not necessarily controlling. *Newell Companies, Inc. v. Kenney Manufacturing Co.*, 864 F.2d 757, 768, 9 USPQ2d 1417, 1426 (Fed. Cir. 1988).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is (703) 305-3979. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 4:30 P.M. The fax phone number for this Group is (703) 305-3597. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634